The Committee Report documents the facts surrounding what may be considered, at least from a campaign money standpoint, the most corrupt political campaign in modern history. Little needs to be added to the ugly picture that has already been painted. It is important for us now to reflect upon the other implications of the investigation.

It is well established that Congress has the authority under the Constitution to conduct investigations for the purpose of laying facts out before the American people as to the workings of their government and for the additional purpose of helping Congress to legislate. Therefore, our duties were twofold: to look into any wrongdoing and, secondly, to consider the implications of what we learn in terms of existing laws. The Committee had some success with regard to both of these responsibilities. The American people have a much better understanding of how their system operated in 1996. Also several individuals were identified as having been involved in improper or illegal conduct. Almost as soon as our Committee went out of business, federal indictments started being returned and there has been at least one call for an independent counsel by the Attorney General. These activities in large part have to do with our Committee's activities.

Although campaign finance reform legislation was not passed, it was not because of lack of information. The gigantic loopholes that were created by the Clinton-Gore campaign and the Attorney General's acquiescence in those activities are now well known because of the work of the Committee. This information should have been sufficient reason for Congress to act, but it did not. However, a permanent record has been created and will forevermore be a part of the ongoing debate which I am confident will eventually result in an overhaul of the laws pertaining to how we elect public officials in this country. Those who are critical of the Committee's efforts because we did not produce a "smoking gun" or pass a particular piece of legislation, overlook

these solid contributions.

Nevertheless, we didn't do as well as we could have. Our work was affected tremendously by the fact that Congress is a much more partisan institution that it use to be. I was personally involved in the Watergate investigation. We had our share of battles on the staff level, but when push came to shove, the Members of the Watergate Committee stood together in order to ferret out wrongdoing on the part of the Nixon Administration. As a young lawyer, I signed the pleading suing President Nixon in order for the Committee to gain access to the White House tapes. Senator Howard Baker, the Ranking Republican Member, made the motion to file that suit. I asked the question in public session that revealed for the first time publicly the existence of that taping system. The Republicans on that Committee felt an obligation to thoroughly investigate the alleged wrongdoing of their own President. And, in large part because the investigation was conducted with bipartisan cooperation, campaign finance reform was one of the benefits. Congress made sweeping changes in 1974.

We all watched the Iran Contra investigation of President Reagan and saw that, although the Committee had many rough days when witnesses seemed to put the Committee on the defensive, the Republican leader of the Committee, Senator Warren Rudman, joined with the Chairman, Senator Daniel Inouye and presented a united front in order to get at the truth.

Historically there are other examples wherein Committee minorities have cooperated in an aggressive investigation of a President of their own party.

We should realize that not only is Minority cooperation in investigations and hearings desirable and appropriate, it is actually an absolute necessity if the Committee is going to carry out its obligations to the American people. As we look to the future and possible future

investigations, we should do so with the understanding that if a handful of Senators, along with counsel, see their role as defense lawyers for the President and use the Committee's valuable time to minimize and denigrate the Committee's work and to provide justification and encouragement for those being investigated, then we can be assured that the investigation will not achieve its goals.

In the past I believe that members have been deterred from extreme partisanship because of concern over public opinion and how they would be treated in the press. For whatever reason I believe that concern not is nearly as prevalent today. Partisanship begets partisanship and confrontation and the press is much more likely to report on "partisan bickering" than to pass judgment on who is responsible for it. That hurts the reputation of the Committee and plays into the hands of those who want the Committee to fail.

The minority, of course, claims that the partisanship was on the Republican side; they simply wanted the investigation to be balanced. Yet I repeatedly assured the Minority, publicly and privately, that if they would assist and participate in the investigation of illegal and improper campaign activities, I would join them not only in making sure that Republicans didn't escape scrutiny, but in assuring that we looked at the broader picture of the role of independent groups. I also promised to address other issues that might merit legislative attention in our report to the Senate and other committees of jurisdiction. I went against the wishes of many in my party and supported an inquiry broad enough to include more than just the Clinton-Gore Campaign. The Minority answered that gesture with a demand that we have the broadest possible investigation with the least amount of money with which to conduct it. From the outset, the Minority went about trying to sell the notion that the primary mission of our investigation was campaign finance

reform -- even though the Governmental Affairs Committee has no jurisdiction in this area. If that had been the primary reason for the hearings, the Rules Committee would have conducted it. Instead of being concerned about the massive array of criminal and improper activity that affected the basic integrity of our electorial process, the Minority attempted from the outset to divert valuable time and resources toward subpoenas to Republican-related groups which apparently were engaged in no illegal activity at all. So even though we were faced with investigating a massive scandal, and even though scores of people were leaving the country and taking the fifth amendment and the Committee was faced with a severe time limitation, the Minority insisted that the Committee, at the very beginning, devote substantial valuable time and resources to "even things up." No Committee can effectively operate under these circumstances.

The Minority report reveals the depth of their partisan commitment. It consists of three parts: First, an attack on the Majority of this Committee; secondly, attacks on as many other Republicans as possible; and third, a defense brief for the Administration. The Minority now comprises the only group in America that does not believe that there was serious wrong doing in the Clinton-Gore campaign and the DNC during the last election. The Minority's concerns are not with the improper activities of the highest elected and appointed officials in this country. Their concerns are with Republicans who are private citizens, people such as Grover Norquist, whom they ruthlessly castigate without justification.

While espousing campaign finance reform, the Minority proved to be reforms greatest enemy. By opposing a fair investigation into the wrongdoing of the administration, they sacrificed all credibility on the reform issue and provided a safe haven for all opponents of reform.

I would recommend, that in the future, it be acknowledged that a Committee investigation

cannot reach its potential if there is not agreement on the front end as to what the Committee's goals are to be. In future similar circumstances, leaders of both parties, along with the Chairman and Ranking Member of the Committee, should meet and agree upon the goals and priorities of the Committee. The agreement should be reflected in the resolution authorizing the investigation. If such an agreement cannot be reached, then the investigation should not proceed. While this seems to give the Minority a veto, in a very real sense the Minority already has a veto power as set forth above. The court of public opinion will remain the only real restraint, as is the case now.

Furthermore, future investigations should be done by a select Committee, not a standing Committee. The model should be the Watergate Committee. The leadership should select four members of the Majority and three member of the minority, based, in part, upon their agreement to work together to achieve the agreed upon purposes and priorities of the Committee.

The Committee should not have a cutoff date. As set forth in the Committee report, the imposition of a cutoff date severely hamstrings the Committee's work by giving those being investigated a target date by which to delay and stonewall. After the Iran-Contra hearings, Senators Mitchell and Cohen advised us of how unwise it was to impose such a cutoff date and that message needs to be delivered again.

I believe that, with adherence to the above guidelines, that Congress can continue its historic investigative responsibilities. Otherwise, unless the atmosphere in Congress changes markedly, investigations will become increasingly partisan and less productive. Under present circumstances, a President under investigation knows that, regardless of his transgressions, he will have substantial support in Congress, with some Members defending his every action. It is important to recognize that a Committee must have a certain measure of cooperation from the

President, whether it be voluntary or induced.

During this investigation, the White House did everything possible to delay, mislead and undermine the Committee. It was very mindful of the cutoff date. Time and again promises to produce documents would be broken. Records would be produced after the relevant witness already had testified. Documents would be withheld and privileges would be asserted solely for the purpose of buying time. During the Iran-Contra investigation, President Reagan waived all privileges and opened up all records, even including his own personal diaries. During Watergate, President Nixon faced a united committee and a special prosecutor willing to take him to court to force the release of the White House Tapes. President Clinton faced a much different situation. His White House felt no compulsion to cooperate, knowing that we had a divided committee and knowing he had an Attorney General who would not appoint a special counsel to investigate the campaign finance scandal.

In addition, most Committees conducting investigations as important as this one are accompanied by a very active grand jury. Again, this was true of Watergate and Iran Contra, as well as many other investigations. Aggressive criminal investigations make it much more likely for a Committee to obtain a cooperation of key witnesses because of the pressure such witnesses feel. Clearly, key witnesses felt no such pressure during our investigation. But very shortly after our Committee went out of business on December 31, 1997, indictments started to be returned against associates of the President and Vice President, even though information of their activities had been known for over a year. Although many are questioning the future viability of the independent counsel statute, the Attorney General's handling of this matter will present a strong argument <u>against</u> abolition of that statute.

It is also clear that major committee investigations have to come to terms with the realities of the modeern media. Most of the activities of Congress and individual members of Congress are judged by their ability to get their message across on television, usually in short sound bites. With the proliferation of cable channels, there is extreme competition for the attention of the public, which has an increasingly short attention span. The public demands, or at least the news media thinks the public demands, high drama and quick resolutions. Witnesses with "star quality" are required. Complex Committee investigations do not fit neatly within this environment. In the first place, 16 Senators, each usually with only 10 minutes in which to question, is not a system designed to effectively cross examine witnesses. With rare exceptions, these investigations are laborious, often boring, piecemeal processes which require an audience which follows closely enough to understand the significance of the testimony they are hearing.

Watergate, of course, was an exception. Although that investigation started off in the traditional way, things soon changed. The Watergate Committee started off with a young employee of the Committee to Re-elect the President, who was questioned about an organizational chart which set forth the members of the Committee staff. The Committee was pursuing a "bottom up" approach, starting with minor witnesses. Predictably, the hearings were pronounced boring and useless. Fortunately, shortly thereafter, James McCord was being sentenced down the street before Judge Sirica and important information was elicited. Shortly after that, Mr. McCord was before the Committee and things began to take a different course. Then, John Dean, the White House Counsel, came forth to testify against the President and then the taping system was discovered. Of course, these were extremely unusual events which had never occurred before that time and have not since then. Historically, investigations have much

less dramatic results. Investigations usually resolve some matters and leave many matters unresolved, as is the case with both criminal and civil trials.

It may be that Committees could serve their purpose in the future by simply laying out the results of investigations already completed. Under such an approach, the decision as to whether or not to even have public hearings would await the completion of the investigation when results had been analyzed and conclusions reached. Regardless of the quantity or importance of the information produced, the investigative committee of the future that cannot produce a "smoking gun" or dramatic witnesses on a regular basis will not be judged as having "captured the public attention," which now is becoming the ultimate test of success.

The China Issue As with all other non-Republican areas of our investigation, the Minority in their report seeks to minimize the Committee's efforts with regard to the issue of foreign influence -- even to the point of using misleading closed-session comments out of context. Therefore, the public is left with a partisan split as to the interpretation of classified materials.

I would suggest to anyone who wants to objectively consider this matter to do the following: Read my July 8, 1997 opening statement, wherein I set forth some of the facts pertaining to the Chinese plan to influence our elections. First of all, you will note the difference between what I said and what some have reported that I said. I did not say, for example, that I would prove, nor did I allege, that the PRC funnelled money into our elections, although, as it turns out, there is strong circumstantial evidence that they were so involved. Some in the media have difficulty in making the distinction between the plan on the one hand, and the implementation

of the plan on the other. Secondly, read the Majority report which sets forth the individuals with close ties to the Chinese government who were funneling illegal money into the Democratic National Committee. It concludes that there is "strong circumstantial evidence" that China was involved. And while reading these documents, keep in mind the fact that both of these documents were carefully worded and they were thoroughly vetted by the CIA and FBI and National Security Agency, which, are headed by appointees of the Clinton Administration. When Members of the Minority began to attack my statement, I asked FBI Director Freeh, "Would you have let me go forward with my statement knowing that it contained incorrect information?" He responded, "Of course not."

In view of some of the comments in the Minority report and certain Minority individual views, I believe a few further comments are appropriate.

Why did I make the comments I made on the opening day of the hearings? First of all, I knew the statement was accurate and, secondly, I did not believe that the matter was being seriously investigated. Our committee had a short life span and it was my belief that, if we could not bring the matters to the public's attention, serious questions with regard to the 1996 campaigns might never be thoroughly pursued. Therefore, after consulting with the Majority on the Committee and after having asked Senator Glenn to join me (which he declined to do), I made the statement and have continued to press our federal agencies to inform Congress on the information they have on this matter and to conduct a proper and thorough investigation. As a result, our intelligence and investigative agencies began to supply to Congress -- albeit grudingly -- the information to which it was entitled. The public now knows about the plan and the serious questions that have been raised concerning the implementation of the plan. Also, after several

missteps, the Justice Department seems to be pursuing this matter. Indictments are now being returned. All of this has been done without revealing classified information which might jeopardize our country's means and methods or sources.

To go back in more detail, early on in our investigation, our staff became aware of the fact that our Federal intelligence and investigative agencies had information which conclusively demonstrated that in mid-1995 the Chinese government devised a plan comprised of several parts, including illegal activities with regard to our elections. Several targeted Members of Congress were briefed concerning this plan as was the National Security Council. As we looked into this matter, we came away with the distinct impression that the Justice Department was doing very little, if anything, to pursue this matter and that this information was not being coordinated with those in the Justice Department who were investigating the campaign finance scandal. These concerns later proved to be well founded.

The information, of course, was classified. We requested that the FBI, CIA and NSA work with us to develop a declassified document whereby the public could be informed of this information at least in general terms. Over a period of many days our staff worked with these agencies. The agencies made suggestions, deletions and corrections and finally agreed upon a document. They requested that the heads of these agencies not be called into public session because the mere revelations of which agency had which information might prove to be damaging to sources and methods. We agreed. So while the underlying documentation could not be revealed and witnesses could not be called in public session, we would at least be allowed to provide some hard conclusions to the American people concerning an issue of importance to them. We thought it might also have the effect of energizing the Justice Department. I assumed

that, because of the sign-off by these agencies, my July 8 statement would provoke little controversy within the Committee. That, of course, proved to be an incorrect assumption.

We persisted in prodding these agencies for additional information. They became very reluctant to give us additional information, and in response to question after question, the Justice Department in particular would refuse to provide answers because of "an ongoing criminal investigation." However, even with these barriers, troubling signs appeared. On two different occasions, we were told that the FBI had discovered extremely relevant information, with regard to individuals with close ties to the Chinese government, that they had just discovered in their files. In other words they had the information, but they didn't know that they had it. This last occasion was after the Committee had ended its public hearings. Furthermore, the Attorney General acknowledged that this information involving China had not been given to the Campaign Finance Task Force. This prompted the Attorney General to request an inspector general investigation as to why this had happened.

So not only did the Justice Department have information concerning China's plan to involve itself in our elections. Justice also had information involving illegal money laundering by individuals with close ties to the Chinese government. Apparently no one was looking at the information in its total context to determine if there was a relationship. This, of course, was and is extremely troubling. We are now told that that problem has been rectified at this late date.

As part of the Committee report, we again worked with the above mentioned agencies to carefully draft a rendition of the facts in this area. Again, the underlying information is classified, but we were able to produce a report which demonstrates that 1) there definitely was such a plan and 2) there is strong circumstantial evidence that the Chinese were involved in causing money to

be funneled into our 1996 political campaigns.

Since the Minority persists in trying to undermine this report, certain additional facts should be added. The characterizations of Maria Hsia and Ted Sieong were characterizations given to this Committee by an investigative agency of this Administration. They provided underlying information which has never been and may not be disclosed, which more than amply supports these characterizations. While it is certainly not usually desirable to make such a statement about individuals without being able to supply all of the reasons for making it, on balance its obvious importance and relevance to this investigation makes it important that this information be given to the public.

There is little point in undertaking a sentence-by-sentence rebuttal of the deficiencies in the Minority discussion. However, a few representations made in the Minority chapter are worth mentioning here.

First, the Minority's narrative regarding Mochtar and James Riady, which states "there was no non-public relevant information not already uncovered in the Committee's public investigation,"[1] is wrong. There is additional information available from two separate federal agencies. It discloses a long-term relationship between the Riadys and a Chinese intelligence agency that is distinct from the business relations between the Riadys and China Resources cited by the Minority.

Second, the Minority chapter discusses the notion of what constitutes an "agent" at some

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[1] Minority Report, Chapter Two, section "The Riadys."

length, stating that its use in the Committee report resulted in "misleading allegations."[2] The Committee report employs the word in one instance -- to describe Maria Hsia. The word choice was agreed to by the relevant intelligence and law enforcement agencies. In fact, it was suggested by them. As the Minority well knows, or ought to know, the use of the word "agent" is amply supported by information made available to the Committee, which cannot be disclosed publicly.

Quite apart from these and other problematic representations by the Minority, I am bothered by their selective and misleading quotations drawn from the Committee's July 28, 1997 closed session hearing. The apparent point of that exercise is to revisit the issue of whether the opening statement I made on July 8, 1997 regarding the "China Plan" was accurate or not. To this end, the Minority suggests that "senior Executive Branch officials" disagreed with my July 8 statement.

As the Minority Members must know, since most of them were there, the same officials confirmed the accuracy of the July 8 statement during the July 28 hearing, particularly regarding whether the information then available suggested that the 1996 Presidential race might have been affected by Chinese efforts to influence our electoral process. It is safe to say that the July 28 hearing was confusing, for reasons that became clear at a September 11, 1997 briefing attended (and called) by those same senior Executive Branch officials.[3] At the September 11 briefing, one senior Executive Branch official reconfirmed the accuracy of my July 8 statement, and explained

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[2] Minority Report, Chapter Two, section "Intermediaries: Relation to the Committee's Public Investigation."

[3] The Minority mistakenly calls the September 11 gathering a hearing. It was not. The senior Executive Branch officials called the meeting at their own behest in order to share with the Committee some significant information about a leading figure in the campaign finance investigation. The briefing was not transcribed, and in hindsight, I am sorry it was not.

that the earlier confusion was largely a matter of semantics. Questions posed at the July 28 session generally asked whether there was any "evidence" regarding certain matters, and such questions elicited answers in the negative.[4] The official explained that he had construed "evidence" narrowly to include only proof which would be admissible during a court proceeding.[5] When asked questions more broadly about "all the information and circumstances," the official gave quite different answers, and observed that the July 8 statement was reasonable and accurate.[6]

As early as July 1997, Minority Members "acknowledge[d], and never denied, that the information shown to us strongly suggested the existence of a plan by the Chinese Government -- containing components both legal and illegal -- designed to influence U.S. congressional elections."[7] At the same time, significant contributions to the DNC and, to a lesser extent, other campaigns, including Republican causes, were being made or solicited by individuals who have ties to the PRC government. One would think that this sequence of events would have engaged the curiosity of the Minority more fully.

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[4] See, e.g., Minority Report, Chapter Two, section "Political Contributions to Federal Elections."

[5] Closed Committee Briefing, September 11, 1997.

[6] Id.

7 Joint Statement by Senators John Glenn and Joseph Lieberman, July 15, 1997.

[7] Joint Statement by Senators John Glenn and Joseph Lieberman, July 15, 1997.

Campaign Finance Reform

Having refused to participate in the investigation of the most egregious offenses of the 1996 campaign, the Minority now pronounces the Committee's work a failure because we did not "produce" campaign finance reform. This line has been readily adopted by many beltway pundits. This must be the first time in history that the investigating committee has been charged with the responsibility of creating a public groundswell to cause sufficient pressure on Congress to produce a particular piece of legislation. The theory seems to be while on the one hand the Committee's revelations were not significant and not interesting enough to merit television coverage, the Committee, nevertheless, should have produced such a groundswell and probably would have if we only had been more "bipartisan." Interestingly, in the few days of testimony we had concerning our campaign finance system, lessons to be drawn from our hearings to date and possible remedial legislation, there was no television coverage and few reporters in the hearing room.

Despite the hypocrisy of many carrying the "reform banner" it must be noted that our investigation did demonstrate the fact that there are no longer any effective limits on campaign contributions in this country and apparently very few limits on what people are willing to do to get them. Primarily because of the Clinton-Gore campaign and the Attorney General's view of those activities, big money now dominates the American political scene as never before. And it will only get worse.

Even though the President and Vice President certified that they would abide by federal fundraising and spending limits in order to receive public funds, they devised a scheme whereby they could raise an additional $44 million on behalf of their campaign. Others will now follow

that example.

Decades ago, we decided in this country that we did not want corporations and labor unions to dominate the political scene. We outlawed contributions by them, imposed limits on individual and political action committee contribution and allowed a certain amount of soft money for local party building activities. Now because of FEC rulings, court rulings and Attorney General opinions, that system has been totally eviscerated.

The 1996 campaign provides us with a glimpse of the future. Money laundering, solicitation of foreign contributions, shakedowns of Indian tribes and Buddhist Monks and, apparently, policy being purchased with regard to a casino were all due at least in part to the new perception of what could be gotten away with. Campaigns can control huge wads of soft money spent on TV ads and feel perfectly safe from a legal standpoint. The problem is of course, that the much harder-to-prove transaction that produced the soft money is often illegal. Without Congress lifting a finger we have rapidly moved from an era of the $1,000 individual contributor or $10,000 "party builder" contributor to one where in order to be a real player you are going to have to come up with hundreds of thousands of dollars. Unless we change the situation, this will lead to future scandals and further cynicism among the American people. A recent public opinion survey on trust in government conducted by the PEW research center revealed that only 44% of the American people believe that their leaders are trustworthy. Among people between the ages of 18 through 29, the number is 39%. And this survey was conducted during a time of economic prosperity at home and peace abroad. These results are consistent with other surveys and should cause the Congress to seriously reconsider the role of money in politics and what effect it is having on the public's perception of us.

Congress has not revised the campaign finance laws since 1979. In many other areas we see that after a period of time laws have been passed that resulted in unintended consequences, and elsewhere court decisions and administrative rulings point out weaknesses in the legislation which go contrary to congressional intent. In those instances we have concluded that we need to address the law again. As a result of this investigation, I believe that this is what we are going to have to do so with regard to campaign finance legislation.

In passing the Federal Election Campaign Act Congress eliminated private contributions to general election Presidential campaigns altogether for those who opted into the Presidential public financing program that was established. For the last 25 years Presidential nominees who were willing to certify that they would not raise and spend additional funds were given millions of dollars of taxpayers money to fund their campaigns. As with the idea of limiting corporate, union, and individual contributions, the idea was to cut down on the corrupting influence or appearance of corruption of large sums of private money being given to elected official and those who aspired to political office. Congress also believed this legislation would have the added benefit of pulling candidates out of the fundraising chase, and instead allow them time to focus on the issues and not so much on the money provided by factions supporting those issues.

Things began to happen in the `70s, which along with later more significant developments in the early `90s, totally transformed the system that Congress had established. For example, the national, state, and local party committees were limited as to what they could spend for individual candidates. These expenditures were called coordinated expenditures. In the late 70's Congress amended the campaign laws, and the FEC interpreted those amendments, to allow national parties to spend unlimited amounts for voter registration, voter turnout, etc., without these monies

counting against the limitations. On the grounds that these expenditures also benefited state and local candidates not subject to "hard money" limits, Congress and the FEC also allowed part of these expenditures to be funded with money that might be referred to as "outside the system" -- what came to be known as "soft money." Under these new rules, parties could raise additional unlimited monies from individuals, corporations and unions and use those monies for grassroots efforts.

In 1991, the FEC decided that national parties could fund 35 per cent of their generic voter drive costs from soft money (40 per cent in a non-election year). The rest would come from hard money. These new regulations also provided for the first disclosure of party soft money activity, and thus the public learned in 1992 that the major party committee raised more than $83 million in soft money, or about four times the amount of soft money estimated to have been spent by party committees in 1984.

In the 1996 cycle, the explosion in soft money continued. Soft money receipts at the Republican National Party committees increased by 178 per cent over 1992, to $138.2 million, while Democratic Party committee receipts of soft money increased 242 per cent over 1992 levels, to $123.9 million. Naturally, with all this new money on hand, there was a tremendous urge to marry that money up with the largest campaign costs by far -- television advertisements.

That marriage was destined to happen once the FEC issued Advisory Opinion 1995-25 on August 24, 1995. Despite an attempt to use careful language, the clear import of Advisory Opinion 1995-25 was to place the FEC stamp of approval for the first time on the use of soft

money by national party committees to pay for broadcast media advertisements that directly referenced federal candidates. From that point on candidate-specific, but issue based, TV advertisements could be lumped with grassroots activity encouraged by the 1979 Amendments. The DNC and the Clinton-Gore campaign felt sanctioned under the FEC's hard/soft allocation regulations to run such helpful TV advertisements utilizing 40% soft money in 1995 (and 35% in the 1996 election year). The first such soft-money DNC and Democratic state party committee ads (also controlled and directed by the Clinton-Gore Re-election Committee) began running in October of 1995. At about the same time the AFL-CIO built on the idea by running similar soft money candidate-specific, but issue based, ads in favor of Clinton-Gore. However, the rules still prohibited soft money electioneering messages and coordination.

The stage was set for those who were willing to take the soft money game to its next level, even if it meant violating the letter and the spirit of the rules. The Clinton-Gore campaign in 1995 and 1996 filled that role. Briefly stated, the Clinton-Gore campaign circumvented the DNC's coordinated expenditure limit and used approximately $44 million in national committee soft money to their candidates' advantage through electioneering messages that they claimed to be "issue advertisements."

The President and Vice President personally raised a good deal of the soft money -- putting them back into the campaign fundraising chase that Congress specifically intended the campaign laws to put them above. The President personally reviewed and edited the television commercial scripts that the soft money went for and helped make the decisions on where the ads would be run. As I pointed out earlier, soft money is not permitted to go to support individual candidates and is not supposed to be coordinated or directed by those candidates. Nevertheless,

the Attorney General, through her opinion on this matter, has permitted this abuse.

The second large area that was exploited in the 1996 election cycle had to do with the transfer of large amounts of soft money from the national party to the state parties which in turn would be directed by the national parties as to how to use the funds for national party purposes. Under FEC rules the amount of permissible soft money expenditures by state parties depends upon the ratio of federal to non-federal candidates on that state's November ballot. For example, if there are two federal races, say Presidential and Congressional, and candidates for eight non-federal offices, the state party can pay for 80 per cent of its generic activities with soft dollars. Given that hard dollars raised in $1,000 increments are significantly more difficult to raise, this gives an incentive to the state party to pay for as many activities as possible using soft money. To take advantage of the system, national party committees begin transferring soft money to state party committees to utilize the various state's higher soft money allowance. Substantial amounts of such transfers are made with state and local parties for "generic voter activities," but in fact ultimately benefit federal candidates, since the funds remain under the control of the national committees. So, again, the use of such soft money allows more corporate, union and large contributions by wealthy individuals into the system.

In the crucial 1995 pre-election year, according to FEC reports, the DNC transferred almost $11.4 million of soft money to state parties, followed by another $6.4 million in the first quarter of 1996. The RNC shifted a little over $2.4 million to the states in about that same period of time. Ultimately the DNC quietly transferred at least $32 million and perhaps as much as $64 million to state democratic party committees in the '96 election cycle. Much of this money was used for television commercials. This transfer of funds allowed state party committees to use the

national party soft money in areas to help their federal election goals more than if the national party committee had made expenditures directly. The DNC on its own would have had to have purchased the same air time under guidelines requiring a higher percentage of hard dollars.

Our hearings demonstrated that on some occasions the very same ad would be run by both the national party and the state party, all created by the DNC Clinton-Gore media consultant, Squire, Knapp and Ochs. FEC reports of the receipts and expenditures of a dozen state Democratic parties from July 1, 1995 to March 31, 1996 indicate that the state entities operated as little more than a pass-through for the DNC to pay for the production and broadcasting ads by the Squier firm.

Thus, the DNC and the Clinton-Gore campaign found a way to use all of the big corporate, union, and individual soft money they could raise for the direct benefit of the Clinton-Gore campaign. The Clinton-Gore campaign would actually raise the soft money for the DNC, which in turn would spend it as they were directed by the Clinton-Gore campaign on ads to benefit the Clinton-Gore campaign. In addition, the DNC would send soft money to the states, which could use higher percentage of soft money than could the DNC, then direct the states as to how to use the money, once again for televison ads to benefit the Clinton-Gore campaign.

It was all an obvious ruse, but it could work in a world where the FEC might take four or five years to impose a modest fine, and with an Attorney General who was willing to adopt a tortured Clinton-Gore legal defense theory in order to justify such actions.

Of course, labor unions and the 501(c)(4) tax exempt independent groups supporting both

parties have kept apace of these new developments. They, too, now systematically run ads supporting or targeting specific candidates, all the while coordinating their activities with the candidate they support and often with each other. As with issue ads the national parties, they claim that the ads they run are "issue ad" and, therefore, can't be regulated even though sometimes they contain clear electioneering messages. However, the fact that they are coordinated with the candidate makes the expenditure, in effect, contributions to the candidate's campaign under Buckley, 424 U.S. (1976), and various FEC enforcement cases. There is nothing in the court cases that would indicate that such coordination is legal. In fact, quite the contrary. Moreover, the FEC takes the position that even "issue ads" which are coordinated are illegal. National parties and independent groups seem to be taking the position that "we didn't coordinate," but if we did it's legal anyway. The DNC and the Clinton-Gore campaign stand alone in this regard because their coordination and actual control by the candidate himself of the soft money expenditure was so open and so blatant that they had to make an all out legal defense based upon the proposition that coordination is permissible.

Buckley addressed the problems of would-be contributors avoiding the contribution limitations by the simple expedient of paying directly for media advertisement for a candidate when the expenditures were controlled by or coordinated with the candidate or his campaign. Buckley stated "... such controlled or coordinated expenditures are treated as contributions rather an expenditures under the Act's (the FECA's) contributions ceilings (And this)...prevents attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions...."

And it certainly makes no difference if the person who wants to purchase the television ad

runs his contribution through the DNC instead of buying it directly. The potential corrupting influence is present either way. Nevertheless, the Attorney General seems to have adopted the Clinton-Gore's campaign argument.

The Attorney General's position will have many ramifications. Her position is based upon the idea that soft money contributions are not "contributions" under the FECA. But if that blanket position is true, then soft money foreign contributions are not illegal either. It is only foreign "contributions" that are illegal under the statute. Under her interpretation, unlimited amounts of foreign money could be brought in by a political campaign and placed in a soft money account and used for so-called "issue ads" and it would be perfectly legal.

So in summary, we see that the '96 elections produced some clear violations of the criminal law and Congress' job in this area is to exercise oversight over the Justice Department to make sure that the laws are enforced. However, we also see the way in which soft money, issue advocacy and coordination are being used -- used in ways that have been long considered to be violations of the law. So with the combination of court rulings, FEC opinions, and lax law enforcement, as a practical matter we are left with no campaign finance system at all.

There are some simple legislative solutions to many of the problems witnessed during the Committee's investigation, and touched on in the discussion above. First, the national party committees and federal candidates must address the soft money situation. The practice of allowing publicly funded primary and general Presidential candidates to raise soft money for themselves, or others, is not consistent with the Federal election Campaign Act's major goal of preventing actual, or the appearance of, corruption resulting from a quid pro quo for large campaign contributions. Legislation needs to be passed prohibiting federal party committees from

soliciting, accepting or directing any money outside that regulated under the Federal Election Campaign Act. Furthermore, federal candidates should be prohibited from soliciting or directing soft money in any manner related to federal elections. The courts, and numerous constitutional scholars, agree that unions and corporations can be constitutionally prohibited from participating in the federal political process. Such a limitation could certainly extend to the party committees whose main purpose is to elect federal candidates.

Implicit in doing away with the soft money system is the corresponding need to raise the hard money contribution limits to a reasonable level in order to dampen the demand for money outside the regulated system. The Committee's investigation revealed that the constant pressure to raise more and more contributions in $1,000 increments has lessened the time federal election candidates have to spend on the actual issues of the campaign, and increases the risk that illegal contributions will be accepted without proper vetting. Inflation has taken its toll over the years. An individual contribution of $1,000 (set in 1972) is worth $259 today. In order to have the same amount of purchasing power today as in 1972, individual contributions would need to be increased to approximately $3,800. All of the contribution limits established in the FECA are subject to the same devaluation. Therefore, it seems advisable to raise all contribution limitations established by the FECA, and index them for future inflation.

As noted in the Final Report's recommendations, the foreign money prohibition can be strengthened by allowing contributions to federal candidates and party committees only from those eligible to vote. This is a brighter line that is more easily enforced than the current law.

Finally, certain revisions in the law related to the FEC itself will speed and facilitate fuller disclosure, as well as more effectively allow the FEC to do its job. The most important

component of such legislation would be the mandatory requirement that all political committees file electronically with the FEC. This allows for quicker and more widely distributed searchable data to be placed on the internet at very little cost. In order to "unclog" the FEC enforcement system, it is also necessary to establish a traffic ticket type schedule of fines for minor reporting violations. Currently the FEC wastes incredible resources processing the most minor violation under the complicated due process procedures established by the FECA with more serious violations in mind.

THE COORDINATION ISSUE

The Minority contends that it is legal for a presidential candidate to direct and control the content of the issue advocacy conducted by that candidate's political party. The Minority also contends that the Majority's conclusion to the contrary is unsupported by any authority. In fact, under current law, it is illegal for a presidential candidate to control his party's issue advocacy expenditures in excess of the permissible coordinated expenditure limits. The purported authorities cited by the Minority are inapposite.

For presidential campaigns, the Federal Election Campaign Act creates an optional public finance system whereby candidates who make the required certifications to the Federal Election Commission can receive federal matching funds. 26 U.S.C. §§ 9003, 9004, et seq. Candidates who voluntarily agree to participate in this system of partial public financing are limited in the amount of money they can spend. 2 U.S.C. § 441a(c). Political parties can make expenditures in connection with the election campaigns of their presidential candidates, but such "coordinated

expenditures" are limited to amounts set in the FECA (in 1996, $11,994,007). 2 U.S.C. § 441a(d).

In enacting the presidential campaign funding mechanisms of the FECA, "Congress properly regarded public financing as an appropriate means of relieving major-party candidates from the rigors of soliciting private contributions." Buckley v. Valeo, 424 U.S. 1, 96 (1976) (per curiam). The FECA's contribution limits to congressional and presidential candidates in general, and the institution of the public financing of presidential campaigns in particular, were enacted "to limit the actuality and appearance of corruption resulting from large individual financial contributions." 424 U.S. at 26 (contribution limits), 96 (public financing of presidential campaigns). In the Buckley case, the Supreme Court upheld the scheme of limits on contributions and expenditures when they were conditioned by the receipt of public funds. The rationale for these limits was to restrict the influence of prospective donors. Clearly, this would apply equally when candidates solicit directly for contributions to their campaigns or to a party committee the candidate controls.

Under the FECA, two important variables that determine whether a particular contribution or expenditure is legal are the content of the message and whether coordination exists between the candidate and the entity that funds the expenditure. In her April 14, 1997 letter to Senator Hatch, Attorney General Reno purported to rely upon FEC rulings that "advertisements that do not contain an 'electioneering message' may be financed, in part, using 'soft money,'" to support the contention that the President's ads were legal. Letter from Attorney General Janet Reno to Senator Orrin Hatch, April 14, 1997, p. 7. Then the Attorney General assumed, without discussion, that the Clinton-Gore ads did not contain an electioneering message. She did so

because, consistent with the Minority Report, she equated "electioneering message" with "express advocacy." In other words, she and the Minority apparently take the position that if the ads are not express advocacy, they, by definition, do not contain an electioneering message. However, the FEC draws a distinction between the two concepts. And under their definition, these ads contain an electioneering message.

The FEC defines "electioneering message" to cover a broad range of expression, broader than the express advocacy standard set forth in Buckley v. Valeo. Under FEC Advisory Opinion 1985-14, "[e]lectioneering messages include statements 'designed to urge the public to elect a certain candidate or party.'" FEC Advisory Op. 1985-14, 2 Fed. Election Camp. Fin. Guide (CCH) ¶ 5819 at 11,185 (April 12, 1985) (citing United States v. United Auto Workers, 352 U.S. 567, 587 (1957); see also FEC Advisory Op. 1984-15; FEC Advisory Op. 1984-23; and FEC Advisory Op. 1984-62). For instance, in Advisory Op. 1985-14, the FEC found the following language that is clearly not express advocacy to constitute an electioneering message: "Let your Republican Congressman know that their irresponsible management of the nation's economy must end -- before it's too late." If an advertisement contains an "electioneering message," then the FECA's restrictions on sources and amounts of funding, and its disclosure and disclaimer requirements apply. See 2 U.S.C. §§ 441d (disclaimer provisions); 431 et seq.(contribution limitations); 441b(a)(prohibition on corporate and union funds); 441e (prohibition on foreign funds); 441f (prohibition on contributions made in the name of another); 434 (reporting requirements); 441a(d)(2) (limitations on the amount of "coordinated expenditures" a party can make on behalf of its presidential candidate).

Clearly, under the FEC's test, which defines "electioneering message" to encompass far

more than "express advocacy," the Clinton-Gore controlled DNC ads were "electioneering message" ads and could not be legally funded with soft money. President Clinton drafted ads that referred to both the President and to Republican Presidential candidate Bob Dole. These ads all criticized candidate Bob Dole and praised candidate Clinton, and compared the two. This content is what the FEC means by advertising "designed to urge the public to elect a certain candidate or party." Accordingly, these advertisements clearly could not legally be funded with "soft money," but rather only with hard money subject to the coordinated expenditure limits set further in the FECA.

Similarly, the Attorney General's April 14, 1997 letter to Senator Hatch, which the Minority Report again adopts, stated: "The FECA does not prohibit the coordination of fundraising or expenditures between a party and its candidate for office. Indeed, the Federal Election Commission . . . has historically assumed coordination between a candidate and his or her political party." Letter from Reno to Hatch 4/17/97, at 6-7 (emphasis in original). The conclusion that the legality of coordinated media advertisements between candidates and parties turns solely on the content of the advertisement, and not on the degree of coordination that the Minority finds to be "assumed," runs counter to Supreme Court case law as well as FEC rulings.

Under the FECA, payment for a communication made "for the purpose of influencing any election for Federal office" is automatically considered a contribution if it is made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 2 U.S.C. §§ 431(9)(A)(I), 441a(a)(7)(B)(I). FEC regulations provide that coordination is presumed when candidates provide information about their plans, projects, or needs to third persons with a view towards having an expenditure

made, 11 C.F.R. § 109.1(b)(4)(I)(A). In addition, those regulations state that financing of a candidate's broadcast materials in cooperation or consultation with a third party is a contribution for the purpose of contribution limitations. 11 C.F.R. §109.1(d)(1).

In its enforcement actions, the FEC found that an in-kind contribution resulted from coordination when the agent of a presidential candidate recommended a vendor to assist an outside individual who towed a banner behind an airplane that read "No Draft Dodger for President." (MUR 3608). The FEC found a violation even though the message contained no express advocacy. And in the Hyatt Legal Services MUR (MUR 3918), the FEC found that electioneering advertisements not containing express advocacy and paid for with soft money were illegal under the FECA when coordinated between a candidate and an outside organization. The advertisements held to constitute an electioneering message stated only, "Hyatt Legal Services. Serving the people of Ohio." The FEC found that this constituted an electioneering message given that the ad's discussion of bankruptcy due to health care costs in promoting legal services echoed a theme of Hyatt's campaign, and that no ads for Hyatt Legal Services outside Ohio mentioned a similar theme. Additionally, in that case, the campaign's media consultant prepared issue advertisements for the outside organization, and the candidate exercised final editorial approval over each of the scripts for the third party organization's radio advertisements. The FEC determined that certain communications involving the participation of a federal candidate results in a contribution on behalf of the candidate if, inter alia, "(1) direct or indirect reference is made to the candidacy, campaign or qualifications for public office of you or your opponent;" or (2) reference is made to the candidate's "views on public policy issues, or those of [the] opponent . . . ." (MUR 3918) (citing FEC Advisory Op. 1990-5, 2 Fed. Election Camp. Fin. Guide (CCH)

¶ 5982 at 11,612 (March 27, 1990)).

More importantly, the most recent Supreme Court decision in this area contradicts the Minority's position on coordination. Colorado Republican Fed. Campaign Comm. v. FEC, 116 S. Ct. 2309 (1996). In the Court's lead opinion, Justice Breyer explained that the Court has held limitations on expenditures generally unconstitutional, but limitations on contributions constitutional. Nonetheless, the Court has treated "coordinated expenditures ... as contributions rather than expenditures" in order to "prevent attempts to circumvent the Act through prearrangement or coordinated expenditures amounting to disguised contributions." Buckley v. Valeo, 424 U.S. 1, 46-47 (1976) (per curiam). Accordingly, Congress can regulate coordinated expenditures consistent with the First Amendment, since "[t]he FECA contribution limit governs not only direct contributions but also indirect contributions that take the form of coordinated expenditures . . . ." Colorado Republican, 116 S. Ct. at 2313 (emphasis added). Where, however, as in Colorado Republican, a party makes expenditures actually independent of its candidates, those independent expenditures cannot be regulated.

According to the Court, the FECA may require coordinated expenditures to be treated as contributions subject to limitations, notwithstanding the First Amendment, because large coordinated expenditures (and contributions) create an appearance of corruption that Congress has a compelling interest to prevent. Indeed, in the Court's view, the "constitutionally significant fact" requiring the absence of limits on independent expenditures "is the lack of coordination between the candidate and the source of the expenditures." Colorado Republican, 116 S. Ct. at 2317. The Court recognized that the FECA's structure would make no sense if the FECA's limits could be easily circumvented through the actions of third parties who coordinated with

candidates. Importantly, Justice Breyer's plurality opinion was not the only one that stressed coordination in determining the legality of the regulation of the relationship between a party and its candidates. Two additional justices, who along with the three justices joining Justice Breyer's opinion constitute a majority of the Court, believe that all party spending on behalf of a candidate is a "contribution," and hence subject to the FECA limits. 116 S. Ct. at 2332. (Stevens, J., dissenting).

To be sure, the Court did not address whether the First Amendment prohibits Congressional efforts to limit overall party coordinated expenditures, although the parties asked it to reach that question. But the Court noted that the Colorado Republican Party's suggested affirmative answer to that question presented "the first case in the 20-year history of the Party Expenditure Provision to suggest that in-fact coordinated expenditures by political parties are protected from Congressional regulation by the First Amendment." Colorado Republican, 116 S. Ct. at 2319.

I, therefore, cannot agree with the Attorney General's position that "[w]ith respect to coordinated media advertisements by political parties . . . , the proper characterization of a particular expenditure depends not on the degree of coordination, but rather on the content of the message." Reno Letter to Hatch 4/14/97, at 7. If that were an accurate understanding of the law, the Colorado Republican case would have been decided differently: the Court would have simply considered the fact that the advertisement could not have constituted a contribution under the FECA because "the content of the message" was not express advocacy. It would not have stressed that the "constitutionally significant fact" of these party advertisements was "the lack of coordination between the candidate and the source of the expenditures." Colorado Republican,

116 S. Ct. at 2317. The position that content alone controls would not only render the Court's entire discussion of coordination irrelevant, but would make nonsensical the Court's decision to reserve the question whether party-coordinated expenditures with candidates could be constitutionally limited.

Moreover, Colorado Republican contradicts the position in the Attorney General's letter that "the law specifically applies only to contributions as technically defined by the Federal Election Campaign Act (FECA) -- funds commonly referred to as 'hard money.'" Letter from Reno to Hatch 4/17/97, at 4 (emphasis in original). Soft money is outside the scope of the FECA only to the extent it is used for the narrow purposes the statute permits, purposes that do not include issue advertisements designed to influence federal elections. As Justice Breyer wrote, "We also recognize that FECA permits unregulated 'soft money' contributions to a party for certain activities, such as electing candidates for state office, see Section 431(8)(A)(I), or for voter registration and 'get out the vote' drives, see Section 431(8)(B)(xii). But the opportunity for corruption posed by these greater opportunities for contributions is at best attenuated. Unregulated 'soft money' contributions may not be used to influence a federal campaign, except when used in the limited, party-building activities specifically designated in the statute." 116 S. Ct. at 2316 (emphasis added).

Since Colorado Republican and the cited FEC regulations and decisions make clear that coordination is the key circumstance that determines whether expenditures on behalf of candidates are legal, a fortiori, when a candidate directs and controls the expenditures of an outside organization as the President did with respect to the DNC's issue advocacy advertisements, coordinated expenditure limitations necessarily apply to that more egregious use of a third party

to disseminate the candidate's message.

The evidence produced by the Committee on Governmental Affairs' Special Investigation in depositions and at its hearings show conclusively that Dick Morris and the President devised a scheme in which the Clinton-Gore reelection committee used the DNC as a separate and additional campaign checking account. The President's control of the DNC was so extensive that to characterize the situation at issue as "coordination" would be to credit the DNC with much more active participation than, in fact, it provided. It is hard, if not impossible, to imagine how a candidate could do more, and a party less, to raise and spend money for that candidate's reelection. These ads, created, financed, and run at the personal request and authorization of the candidate, clearly must be treated as expenditures by the Clinton-Gore reelection campaign.

As pointed out above, the intent of the FECA in providing limited federal funding is to remove the candidate from the fundraising process and to prevent the raising of large private campaign contributions. The deal the taxpayers make with the candidate is that in exchange for their funding, the candidate will forswear outside money, thereby making it less likely that the election will be influenced or appear to be influenced by big money. Obviously, in the matter before us, the clear purpose of the law was circumvented. If a candidate can easily circumvent those limitations through coordination with a third party, such as by raising unlimited sums for a party committee the candidate controls, that objective of the statute is completely undermined.